IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

In re Patent Application of

MIYAMOTO et al.

Serial No. 10/757,510

Filed: January 15, 2004

Atty. Ref.: 723-1460

TC/A.U.: 3714

Examiner: B. Nguyen

For: VIDEO GAME APPARATUS AND INFORMATION STORAGE MEDIUM FOR VIDEO GAME

* *

(July 19, 2009 = Sunday)
July 20, 2009 (= Monday)

Mail Stop Appeal Brief - Patents
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

APPEAL BRIEF

Sir:

Appellant hereby **appeals** to the Board of Patent Appeals and Interferences from the last decision of the Examiner.

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(I) REAL PARTY IN INTEREST

The real party in interest is Nintendo Co., Ltd., a corporation of the country of Japan.

(II) RELATED APPEALS AND INTERFERENCES

The appellant, the undersigned, and the assignee are not aware of any related appeals, interferences, or judicial proceedings (past or present), which will directly affect or be directly affected by or have a bearing on the Board's decision in this appeal.

(III) STATUS OF CLAIMS

Claims 1, 6, 8, 10-11, 17, 19, and 21 are pending and have been rejected. Claims 2-5, 7, 9, 12-16, 18, 20, and 22-54 previously were cancelled. The rejection of claims 1, 6, 8, 10-11, 17, 19, and 21 is being appealed. No claims have been substantively allowed.

(IV) STATUS OF AMENDMENTS

No amendments have been filed since the date of the Final Rejection.

(V) SUMMARY OF CLAIMED SUBJECT MATTER

A listing of each independent claim, each dependent claim argued separately and each claim having means plus function language is provided below including exemplary reference(s) to page and line number(s) of the specification.

Claim 1. A video game apparatus (e.g., 10 in Figs. 1 and 2; p. 13, line 16 to p. 17, line 20) for generating, and supplying to a display (e.g., 30 in Figs. 1 and 2; p. 16, lines 18-19), an image signal for displaying a player object (e.g., player object in Figs. 11-14; p. 35, line 13 to p. 36, line 20) and a land object (e.g., land object in Figs. 11-14; p. 35, line 13 to p. 36, line 20) existing at the foot of the player object in a virtual three dimensional space by processing image data for the player object and the land object according to a program (e.g., 22 in Fig. 5; p. 20, line 5 to p. 24, line 2), said video game apparatus comprising:

a player object image data generator that generates player object image data to display a player object, said player object being at least partially controllable by a user (e.g., 22d and 23a in Fig. 5; p. 20, lines 17-18 and p. 22, lines 6-10);

a land object image data generator that generates land object image data to display a land object including one of a hollow and a hole (e.g., 22c and 23b in Fig. 5; p. 20, lines 15-16 and p. 22, lines 10-12), said land object image data containing a jump code (e.g., "floor code (jump)" in Figs. 11-14; p. 22, line 12 to p. 23, line 2);

a jump code detector that detects the jump code included in the land object image data for displaying the land object in the vicinity of said player object (e.g., 22b in Fig. 5 and S403 in Fig. 9; p. 20, lines 14-15 and p. 32, lines 10-17);

a moving speed detector for detecting a moving speed of the player object being controlled by the user (e.g., 22e in Fig. 5 and S421 in Fig. 10; p. 20, lines 20-21 and p. 35, lines 9-11);

jump distance calculating programmed logic circuitry for calculating a jump distance of the player object based on the moving speed (e.g., 22g in Fig. 5 and S422 in Fig. 10; p. 21, lines 6-18 and p. 35, lines 9-11); and

animation data output programmed logic circuitry outputting animation data to cause the player object to automatically jump over one of said hollow and said hole formed by the land object image data according to said jump distance when the jump code is detected (e.g., S423 in Fig. 10; p. 35, lines 1-12).

Claim 6. A video game apparatus (e.g., 10 in Figs. 1 and 2; p. 13, line 16 to p. 17, line 20) for generating, and supplying to a display (e.g., 30 in Figs. 1 and 2; p. 16, lines 18-19), an image signal for displaying a player object (e.g., player object in Fig. 16; p. 35, line 13 to p. 36, line 20) and a land object (e.g., land object in Fig. 16; p. 35, line 13 to p. 36, line 20) existing at the foot of the player object in a virtual three dimensional space by processing image data for the player object and the land object according to a program (e.g., 22 in Fig. 5; p. 20, line 5 to p. 24, line 2), said video game apparatus comprising:

a player object image data generator that generates player object image data to display a player object, said player object being at least partially controllable by a user (e.g., 22d and 23a in Fig. 5; p. 20, lines 17-18 and p. 22, lines 6-10);

a land object image data generator that generates land object image data to display a land object including a wall surface (e.g., 22c and 23b in Fig. 5; p. 20, lines 15-16 and p. 22, lines 10-12), said land object image data containing a climb code (e.g., "wall surface code (scramble up)" in Fig. 16; p. 37, line 9 to p. 38, line 5);

a climb code detector that detects the climb code included in the land object image data for displaying the land object in the vicinity of said player object being controlled by the user (e.g., 22b in Fig. 5 and S428 in Fig. 15; p. 20, lines 14-15 and p. 37, lines 9-21);

wall surface height calculating programmed logic circuitry that calculates a height of the wall surface displayed by the land object image data (e.g., 22g in Fig. 5 and S429 in Fig. 15; p. 21, lines 6-18 and p. 38, lines 1-5);

said animation data output programmed logic circuitry outputting such animation data that the player object automatically climbs in accordance with the height of the wall surface when the climb code is detected (e.g., S428 in Fig. 15; p. 37, line 9 to p. 38, line 5).

Claim 8. A video game apparatus (e.g., 10 in Figs. 1 and 2; p. 13, line 16 to p. 17, line 20) for generating, and supplying to a display (e.g., 30 in Figs. 1 and 2; p. 16, lines 18-19), an image signal for displaying a player object (e.g., player object in Fig. 28; p. 35, line 13 to p. 36, line 20) and a land object (e.g., land object in Fig. 28; p. 35, line 13

to p. 36, line 20) existing at the foot of the player object in a virtual three dimensional space by processing image data for the player object and the land object according to a program (e.g., 22 in Fig. 5; p. 20, line 5 to p. 24, line 2), said video game apparatus comprising:

a player object image data generator that generates player object image data to display a player object, said player object being at least partially controllable by a user (e.g., 22d and 23a in Fig. 5; p. 20, lines 17-18 and p. 22, lines 6-10);

a land object image data generator that generates land object image data to display a land object (e.g., 22c and 23b in Fig. 5; p. 20, lines 15-16 and p. 22, lines 10-12), said land object image data containing a camera switching code (e.g., areas in Fig. 28; p. 44, line 1 to p. 48, line 14);

a camera switching code detector that detects the camera switching code included in the land object image data for displaying the land object in the vicinity of said player object being controlled by the user (e.g., 22b in Fig. 5 and S428 in Fig. 15; p. 20, lines 14-15 and p. 44, line 1 to p. 48, line 14);

a plurality of virtual cameras (e.g., virtual cameras in Fig. 28; p. 44, line 1 to p. 48, line 14);

camera switching programmed logic circuitry to automatically switch between said plurality of virtual cameras dependent upon said camera switching code detected by said camera switching code detector (e.g., S614 in Fig. 29; p. 44, line 1 to p. 48, line 14).

Claim 10. A video game apparatus according to claim 1, wherein said land object image data generator (e.g., 22c and 23b in Fig. 5; p. 20, lines 15-16 and p. 22, lines 10-12) also contains a sound switching code (e.g., p. 48, line 15 to p. 49, line 20), and said video game apparatus further comprising:

a sound switching code detector that detects the sound switching code included in the land object image data for displaying the land object in the vicinity of said player object (e.g., 22b in Fig. 5 and S901 in Fig. 37; p. 20, lines 14-15 and p. 48, line 15 to p. 49, line 20);

a sound data generator to generate sound data for a plurality of ones of sound (e.g., 15 and 31 in Fig. 2 and 24 in Fig. 5; p. 16, lines 8-11 and p. 23, lines 3-6); and

sound switching programmed logic circuitry to automatically switch the sound data depending upon said detected sound switching code (e.g., S903, S905, S907, and S908 in Fig. 37; p. 48, line 15 to p. 49, line 20).

Claim 11. A video game apparatus (e.g., 10 in Figs. 1 and 2; p. 13, line 16 to p. 17, line 20) for generating, and supplying to a display (e.g., 30 in Figs. 1 and 2; p. 16, lines 18-19), an image signal to display a player object (e.g., player object in Figs. 11-14; p. 35, line 13 to p. 36, line 20) and a land object (e.g., land object in Figs. 11-14; p. 35, line 13 to p. 36, line 20) existing at the foot of the player object in a virtual three dimensional space by processing image data for the player object and the land object according to a program (e.g., 22 in Fig. 5; p. 20, line 5 to p. 24, line 2), and further supplying a sound signal to sound output programmed logic circuitry (e.g., 15 and 31 in

Fig. 2 and 24 in Fig. 5; p. 16, lines 8-11 and p. 23, lines 3-6) by processing sound data according to a program (e.g., 22 in Fig. 5; p. 20, line 5 to p. 24, line 2), said video game apparatus comprising:

a player object image data generator that generates player object image data to display a player object, said player object being at least partially controllable by a user (e.g., 22d and 23a in Fig. 5; p. 20, lines 17-18 and p. 22, lines 6-10);

a land object image data generator that generates land object image data to display a land object including one of a hollow and a hole (e.g., 22c and 23b in Fig. 5; p. 20, lines 15-16 and p. 22, lines 10-12), said land object image data containing a jump code (e.g., "floor code (jump)" in Figs. 11-14; p. 22, line 12 to p. 23, line 2);

a jump code detector that detects the jump code included in the land object image data for displaying the land object in the vicinity of said player object (e.g., 22b in Fig. 5 and S403 in Fig. 9; p. 20, lines 14-15 and p. 32, lines 10-17);

a moving speed detector for detecting a moving speed of the player object being controlled by the user (e.g., 22e in Fig. 5 and S421 in Fig. 10; p. 20, lines 20-21 and p. 35, lines 9-11);

jump distance calculating programmed logic circuitry for calculating a jump distance of the player object based on the moving speed (e.g., 22g in Fig. 5 and S422 in Fig. 10; p. 21, lines 6-18 and p. 35, lines 9-11); and

animation data output programmed logic circuitry outputting animation data to cause the player object to automatically jump over one of said hollow and said hole

formed by the land object image data according to said jump distance when said jump code is detected (e.g., S423 in Fig. 10; p. 35, lines 1-12).

Claim 17. A video game apparatus (e.g., 10 in Figs. 1 and 2; p. 13, line 16 to p. 17, line 20) for generating, and supplying to a display (e.g., 30 in Figs. 1 and 2; p. 16, lines 18-19), an image signal to display a player object (e.g., player object in Fig. 16; p. 35, line 13 to p. 36, line 20) and a land object (e.g., land object in Fig. 16; p. 35, line 13 to p. 36, line 20) existing at the foot of the player object in a virtual three dimensional space by processing image data for the player object and land object according to a program (e.g., 22 in Fig. 5; p. 20, line 5 to p. 24, line 2), and further supplying a sound signal to sound output programmed logic circuitry (e.g., 15 and 31 in Fig. 2 and 24 in Fig. 5; p. 16, lines 8-11 and p. 23, lines 3-6) by processing sound data according to a program (e.g., 22 in Fig. 5; p. 20, line 5 to p. 24, line 2), said video game apparatus comprising:

a player object image data generator that generates player object image data to display a player object, said player object being at least partially controllable by a user (e.g., 22d and 23a in Fig. 5; p. 20, lines 17-18 and p. 22, lines 6-10);

a land object image data generator that generates land object image data to display a land object including a wall surface (e.g., 22c and 23b in Fig. 5; p. 20, lines 15-16 and p. 22, lines 10-12), said land object image data containing a climb code (e.g., "wall surface code (scramble up)" in Fig. 16; p. 37, line 9 to p. 38, line 5);

a climb code detector that detects the climb code included in the land object image data for displaying the land object in the vicinity of said player object being controlled by the user (e.g., 22b in Fig. 5 and S428 in Fig. 15; p. 20, lines 14-15 and p. 37, lines 9-21);

wall surface height calculating programmed logic circuitry that calculates a height of the wall surface displayed by the land object image data (e.g., 22g in Fig. 5 and S429 in Fig. 15; p. 21, lines 6-18 and p. 38, lines 1-5);

an animation data output program outputting such animation data that the player object automatically performs an optimal action depending upon the wall height when the climb code is detected (e.g., S428 in Fig. 15; p. 37, line 9 to p. 38, line 5).

Claim 19. A video game apparatus (e.g., 10 in Figs. 1 and 2; p. 13, line 16 to p. 17, line 20) for generating, and supplying to a display (e.g., 30 in Figs. 1 and 2; p. 16, lines 18-19), an image signal to display a player object (e.g., player object in Fig. 28; p. 35, line 13 to p. 36, line 20) and a land object (e.g., land object in Fig. 28; p. 35, line 13 to p. 36, line 20) existing at the foot of the player object in a virtual three dimensional space by processing image data for the player object and land object according to a program (e.g., 22 in Fig. 5; p. 20, line 5 to p. 24, line 2), and further supplying a sound signal to sound output programmed logic circuitry (e.g., 15 and 31 in Fig. 2 and 24 in Fig. 5; p. 16, lines 8-11 and p. 23, lines 3-6) by processing sound data according to a program (e.g., 22 in Fig. 5; p. 20, line 5 to p. 24, line 2), said video game apparatus comprising:

a player object image data generator that generates player object image data to display a player object, said player object being at least partially controllable by a user (e.g., 22d and 23a in Fig. 5; p. 20, lines 17-18 and p. 22, lines 6-10);

a land object image data generator that generates land object image data to display a land object including a wall surface (e.g., 22c and 23b in Fig. 5; p. 20, lines 15-16 and p. 22, lines 10-12), said land object image data containing a camera switching code (e.g., areas in Fig. 28; p. 44, line 1 to p. 48, line 14);

a camera switching code detector that detects the camera switching code included in the land object image data for displaying the land object in the vicinity of said player object being controlled by the user (e.g., 22b in Fig. 5 and S428 in Fig. 15; p. 20, lines 14-15 and p. 44, line 1 to p. 48, line 14);

a plurality of virtual cameras (e.g., virtual cameras in Fig. 28; p. 44, line 1 to p. 48, line 14); and

a camera switching program to automatically switch between said plurality of virtual cameras dependant upon said camera switching code detected by said camera switching code detector (e.g., S614 in Fig. 29; p. 44, line 1 to p. 48, line 14).

Claim 21. A video game apparatus according to claim 1, said game apparatus for also supplying a sound signal to sound output programmed logic circuitry (e.g., 15 and 31 in Fig. 2 and 24 in Fig. 5; p. 16, lines 8-11 and p. 23, lines 3-6) by processing sound data according to a program (e.g., 22 in Fig. 5; p. 20, line 5 to p. 24, line 2),

wherein said land object image data also contains a sound switching code (e.g., p. 48, line 15 to p. 49, line 20), and said video game apparatus further comprising:

a sound switching code detector that detects the sound switching code included in the land object image data (e.g., 22b in Fig. 5 and S901 in Fig. 37; p. 20, lines 14-15 and p. 48, line 15 to p. 49, line 20), a sound data generator to generate sound data for a plurality sounds (e.g., 15 and 31 in Fig. 2 and 24 in Fig. 5; p. 16, lines 8-11 and p. 23, lines 3-6); and a sound switching program to automatically switch the sound data depending upon the sound switching code (e.g., S903, S905, S907, and S908 in Fig. 37; p. 48, line 15 to p. 49, line 20).

(VI) GROUNDS OF REJECTION TO BE REVIEWED ON APPEAL

First, whether claims 1, 6, 8, 10-11, 19, 19, and 21 are anticipated by Gever et al. (U.S. Patent No. 6,329,994) under 35 U.S.C. § 102(e).

Second, whether claims 1, 6, 8, 10-11, 19, 19, and 21 are "obvious" over Naka et al. (U.S. Patent No. 5,963,218) in view of Sasaki (U.S. Patent No. 5,577,960) under 35 U.S.C. § 103(a).

(VII) ARGUMENT

A. Claims 1, 6, 8, 10-11, 19, 19, and 21 Are Not Anticipated by Gever.

Claims 1, 6, 8, 10-11, 19, 19, and 21 stand rejected under 35 U.S.C. § 102(e) as allegedly being anticipated by Gever et al. (U.S. Patent No. 6,329,994). This rejection is erroneous and should be reversed for at least the following reasons.

Claim 1 recites, *inter alia*, "a jump code detector that detects the jump code included in the land object image data for displaying the land object in the vicinity of said player object . . . and animation data output programmed logic circuitry outputting animation data to cause the player object to automatically jump over one of said hollow and said hole formed by the land object image data according to said jump distance when the jump code is detected." Claim 6 recites, *inter alia*, "a climb code detector that detects the climb code included in the land object image data for displaying the land object in the vicinity of said player object being controlled by the user . . . [and] animation data output programmed logic circuitry outputting such animation data that the player object automatically climbs in accordance with the height of the wall surface when the climb code is detected." Claim 8 recites, *inter alia*, "a camera switching code detector that detects the camera switching code included in the land object image data for displaying the land object in the vicinity of said player object being controlled by the user . . . [and] camera switching programmed logic circuitry to automatically switch between said plurality of virtual cameras dependent upon said camera switching code detected by said camera switching code detector." Claims 11, 17, and 19 recite similar features,

respectively, and claim 21 recites, *inter alia*, "a sound switching code detector that detects the sound switching code included in the land object image data, a sound data generator to generate sound data for a plurality sounds; and a sound switching program to automatically switch the sound data depending upon the sound switching code." These features are not disclosed either expressly or inherently by Gever. Thus, Gever fails to anticipate these claims (and any dependents therefrom).

Page 3 of the Final Office Action indicates that the limitations of automatically jumping, climbing, and switching virtual cameras "are inherent from Gever et al.'s teaching of [a] user interface allowing the user to create scripts and define animation sequences including motion paths, sound and interactions of the smart objects with one another (6:45-60)(5:8-6:45)." However, Applicant respectfully submits that this argument based on inherency is improper as a matter of law. "Inherency . . . may not be established by probabilities or possibilities. The mere fact that a certain thing may result from a given set of circumstances is not sufficient." *In re Oelrich*, 666 F.2d 578, 581 (CCPA 1981). *See also Ex parte Skinner*, 2 USPQ2d 1788, 1789 (BPAI 1986) ("[T]he examiner must provide some evidence or scientific reasoning to establish the reasonableness of the examiner's belief that the functional limitation is an inherent characteristic of the prior art" before the burden is shifted to the applicant to disprove the inherency.). Furthermore, the Board of Patent Appeals and Interferences recently issued the precedential opinion *Ex Parte Whalen II*, Appeal No. 2007-4423, decided on July 23, 2008, which stated that "The Examiner has not provided evidence or scientific reasoning

to show that any specific composition disclosed by Evans is within the scope of the instant claims, and therefore has not made out a case of inherent anticipation by Evans."

In this case, Gever does state that one smart object may be made to interact with another smart object (which may be a smart object or other object) by means of a script. However, it is by no means "inherent" in Gever that these scripts trigger the automatic jumping, climbing, and switching of virtual cameras by means of corresponding codes embedded in the objects other than the smart objects themselves. For example, with respect to claim 1, Gever does not explicitly or inherently disclose "caus[ing] the player object to automatically jump over one of said hollow and said hole formed by the land object image data according to said jump distance when the jump code [included in the land object image data] is detected." The mere possibility of a having a script embedded in a smart object for causing that particular or another object to react in a particular way is not enough to establish a case of inherency with respect to the claim features in issue. Because Gever does not explicitly or inherently disclose each and every limitation recited in the claims, it does not anticipate the claimed invention.

Furthermore, Applicant respectfully notes that the Examiner's arguments in the "Response to Arguments" section of the Final Office Action that relate to Gever continue to improperly "stretch" the teachings of Gever beyond the bounds of credulity. For example, similar to the above, Applicant previously argued that the Examiner does not identify any portion of Gever in which a script associated with a first object causes an action in a second object. That is, the Examiner does not identify any portion of Gever that teaches a script associated with object (or sub-object) 1 defining an action of object

2. In response, and as above, the Examiner now points to col. 5, line 8 to col. 6, line 60. However, this lengthy portion of Gever merely teaches that objects may interact with each other -- without ever indicating that a script associated with a first object causes an action in a second object.

The Examiner responds to the argument that Gever does not automatically switch cameras by arguing that Gever "teaches [a] user interface software application allowing the user to . . . create scripts that defines [sic] camera angles and simulated lighting characteristics that are applied in rendering the animation of sequences (6:46-40)." Although the claim language and this cited portion of Gever are similar in that they both concern virtual camera actions, there is a difference between "automatically switch[ing] between said plurality of virtual cameras dependent upon said camera switching code detected by said camera switching code detector" and changing the angle of a single camera.

Finally, in response to the argument that Gever does not teach or suggest automatically switching sound, the Examiner notes that Gever teaches "Smart Objects having embedded voice (4:59-5:5) and is [sic] capable of react [sic] or interact [sic] with elements in the windows. . . ." Yet, Applicant notes that the cited portion of Gever merely disclose that Smart Objects may have "personalities" comprising a voice. That is, this cited portion of Gever still does not disclose a code in a second object for causing sound switching in a first object.

In a nutshell, Applicant respectfully submits that the Examiner has failed to appreciate the rather fundamental difference between systems directed to designing

animations and developing custom animations (i.e., as in Gever), and systems/methods for playing video games (i.e., as in the claimed invention). By overlooking the fundamental differences between designing custom animations and having users actually play already developed games, together with the abstraction of certain language from the claim limitations, the Examiner has effectively ignored Applicant's arguments by maintaining the erroneous grounds of rejection. Applicant respectfully submits that the Examiner has erred in this regard. Indeed, Applicant's previous claim amendments, which emphasized that the claimed techniques relate to a game actually being played by a player (as opposed to an auto-mode or demo-mode) also effectively foreclosed the possibility of the teachings such as those found in Gever -- which relate to defining custom animations to the claims -- being applied to the claims. Simply stated, the Examiner does not seem to understand that this application is directed to in-game game play techniques that make game play easier, as opposed to animation or scripting techniques.

Because the Examiner's comments with respect to the specific features explicitly claimed continue to overlook the facts that (1) such actions are performed automatically, even though the player object is at least partially controllable by a user, (2) control codes are embedded in second objects which control the player object, and (3) offer absolutely no support beyond mere speculation for the inherency-based argument, Applicant respectfully submits that Gever fails to anticipate the invention defined by the claims. Thus, Applicant respectfully requests that this § 102 rejection be reversed.

In addition to the features of claim 1 noted above, claims 10 and 21 further recite sound switching codes embedded in land objects. Gever does not expressly or inherently disclose this additional subject matter of claims 10 and 21. Indeed, even assuming, *arguendo*, that Gever "inherently" teaches a climb code embedded in a floor object (which it does not), Gever does not further disclose changing an environmental variable such as sound based on a code embedded in a floor object. Changing sound is not the necessary and inevitable consequence of embedding codes in "Smart Objects" -- much less "Smart Objects" that have nothing to do with the thing being changed. Claims 10 and 21 therefore should be allowable for at least this additional reason.

B. Claims 1, 6, 8, 10-11, 19, 19, and 21 Are Not Obvious Over Naka and Sasaki.

Claims 1, 6, 8, 10-11, 19, 19, and 21 stand rejected under 35 U.S.C. § 103(a) as allegedly being "obvious" over Naka et al. (U.S. Patent No. 5,963,218) in view of Sasaki (U.S. Patent No. 5,577,960). This rejection is erroneous and should be reversed for at least the following reasons.

The alleged Naka/Sasaki combination fails to teach or suggest at least the above-identified features. Thus, the alleged Naka/Sasaki combination, even if appropriate (which Applicant certainly does not concede), fails to render obvious claims 1, 6, 8, 10-11, 19, 19, and 21.

Naka teaches a teleportation device, such that when one player comes into proximity with the device, a swap of player positions is made. This, however, is not a jump, climb, or camera change code, as substantially claimed in the independent claims.

Simply because one type of automatic character manipulation is taught does not mean that all conceivable types of automatic character manipulation are then obvious.

Further, the Examiner alleges that Naka teaches automatically causing a player character to jump in accordance with the action code, but in the same sentence equates the action code to "pressing jump command." Applicant respectfully submits that if a player has to input a command, then the player object is not automatically caused to perform an action in response to a detected code associated with an object, but instead is caused to perform an action in response to a detected in put. Further, because an input needs to be entered, the action is responsive to input and thus not automatic. The difference is elementary: If a player does not enter a jump command proximate to a jump code, the player object will still jump According to Applicant's claims, whereas the player object will fall into a hole according to the combined Naka/Sasaki teachings.

The Examiner argues on pages 7 and 10 of the Final Office Action that the climbing, jumping, camera switching, and sound generating limitations "are notoriously well known in the video game industry, e.g., video game auto-play or demo mode." First, Applicant notes that this bare allegation is unsupported by any factual finding of record. That is, the Examiner has not pointed to anything in the prior art of record in support of this bare allegation, nor has the Examiner even resorted to an argument based on inherency or Official Notice. Second, Applicant notes that such teachings do not make up for the deficiencies in the Naka/Sasaki combination, at least because the bare allegation does not provide any indication concerning control codes of any kind -- much less relying on a code in one object to affect a second object in the claimed way.

Findings of obviousness cannot be supported by mere allegations, absent some articulated reasoning. Here, the Examiner has only offered bare allegations without any reasoning how or why this purported "teaching" is being introduced to the combination of Naka and Sasaki. Moreover, even if the Examiner's allegation is true (i.e., that climbing, jumping, camera switching, and sound generating limitations "are notoriously well known in the video game industry, e.g., video game auto-play or demo mode"), the Examiner merely states that a more interesting video game apparatus would be produced. Applicant respectfully submits that one of ordinary skill in the art at the time of the invention would not have introduced an auto-play or demo mode teachings into a live game play scenario as alleged on page 7 of the Final Office Action. Much to the contrary, Applicant believes that one of ordinary skill in the art at the time of the invention would not have looked to scripted auto-play or demo mode techniques when coming up with way of enhancing functionality of the game play itself. Furthermore, the alleged motivation behind combination lacks merit, as it seems quite odd to say that introducing auto-play or demo mode techniques into Naka and/or Sasaki would make a game more interesting.

Page 10 of the Final Office Action now alleges that it would have been obvious to one of ordinary skill in the art at the time of the invention to modify Naka in view of Sasaki "to come up with a 3-D video game system and apparatus with less interruptions thus create mores more excitements and attract more game players." It is difficult to tell what the Examiner might be alleging from this statement. However, it is clear that this single sentence alleged motivation is insufficient to support the legal conclusion of

obviousness -- especially because the combined features of the independent claims are not taught or suggested by the prior art of reference at all. The Final Office Action has introduced no evidence regarding how or why a game may be found more or less enjoyable. Moreover, given the dubious factual finding above, such a statement divorced from any context suggests that this statement is a poor attempt at a hindsight reconstruction of Applicant's claims using Applicant's own teachings.

In view of the foregoing, Applicant respectfully requests that this § 103 rejection be reversed.

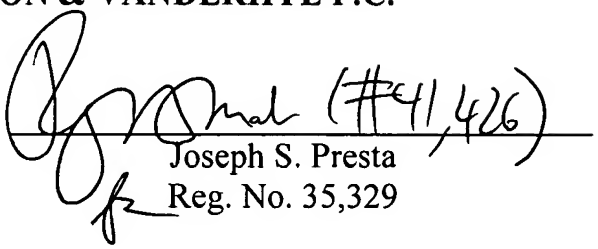
In addition to the features of claim 1 noted above, claims 10 and 21 further recite sound switching codes embedded in land objects. The prior art of record, alone and in combination, fails to teach or suggest this additional subject matter of claims 10 and 21. Indeed, even assuming, *arguendo*, that the prior art of record teaches a climb code embedded in a floor object (which it does not), it does not further teach or suggest changing an environmental variable such as sound based on a code embedded in a floor object. There simply is nothing "obvious" about embedding multiple control codes in an object with those same control codes affecting different objects and environmental things. Claims 10 and 21 therefore should be allowable for at least this additional reason.

CONCLUSION

In conclusion it is believed that the application is in clear condition for allowance; therefore, early reversal of the Final Rejection and passage of the subject application to issue are earnestly solicited.

Respectfully submitted,

NIXON & VANDERHYE P.C.

By: 
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(VIII) CLAIMS APPENDIX

1. A video game apparatus for generating, and supplying to a display, an image signal for displaying a player object and a land object existing at the foot of the player object in a virtual three dimensional space by processing image data for the player object and the land object according to a program, said video game apparatus comprising:

a player object image data generator that generates player object image data to display a player object, said player object being at least partially controllable by a user;

a land object image data generator that generates land object image data to display a land object including one of a hollow and a hole, said land object image data containing a jump code;

a jump code detector that detects the jump code included in the land object image data for displaying the land object in the vicinity of said player object;

a moving speed detector for detecting a moving speed of the player object being controlled by the user;

jump distance calculating programmed logic circuitry for calculating a jump distance of the player object based on the moving speed; and

animation data output programmed logic circuitry outputting animation data to cause the player object to automatically jump over one of said hollow and said hole formed by the land object image data according to said jump distance when the jump code is detected.

6. A video game apparatus for generating, and supplying to a display, an image signal for displaying a player object and a land object existing at the foot of the player object in a virtual three dimensional space by processing image data for the player object and the land object according to a program, said video game apparatus comprising:

a player object image data generator that generates player object image data to display a player object, said player object being at least partially controllable by a user;

a land object image data generator that generates land object image data to display a land object including a wall surface, said land object image data containing a climb code;

a climb code detector that detects the climb code included in the land object image data for displaying the land object in the vicinity of said player object being controlled by the user;

wall surface height calculating programmed logic circuitry that calculates a height of the wall surface displayed by the land object image data;

said animation data output programmed logic circuitry outputting such animation data that the player object automatically climbs in accordance with the height of the wall surface when the climb code is detected.

8. A video game apparatus for generating, and supplying to a display, an image signal for displaying a player object and a land object existing at the foot of the player object in a virtual three dimensional space by processing image data for the player object and the land object according to a program, said video game apparatus comprising:

a player object image data generator that generates player object image data to display a player object, said player object being at least partially controllable by a user;

a land object image data generator that generates land object image data to display a land object, said land object image data containing a camera switching code;

a camera switching code detector that detects the camera switching code included in the land object image data for displaying the land object in the vicinity of said player object being controlled by the user;

a plurality of virtual cameras;

camera switching programmed logic circuitry to automatically switch between said plurality of virtual cameras dependent upon said camera switching code detected by said camera switching code detector.

10. A video game apparatus according to claim 1, wherein said land object image data generator also contains a sound switching code, and said video game apparatus further comprising:

a sound switching code detector that detects the sound switching code included in the land object image data for displaying the land object in the vicinity of said player object;

a sound data generator to generate sound data for a plurality of ones of sound; and

sound switching programmed logic circuitry to automatically switch the sound data depending upon said detected sound switching code.

11. A video game apparatus for generating, and supplying to a display, an image signal to display a player object and a land object existing at the foot of the player object in a virtual three dimensional space by processing image data for the player object and land object according to a program, and further supplying a sound signal to sound output programmed logic circuitry by processing sound data according to a program, said video game apparatus comprising:

a player object image data generator that generates player object image data to display a player object, said player object being at least partially controllable by a user;

a land object image data generator that generates land object image data to display a land object including one of a hollow and a hole, said land object image data containing a jump code;

a jump code detector that detects the jump code included in the land object image data for displaying the land object in the vicinity of said player object;

a moving speed detector for detecting a moving speed of the player object being controlled by the user;

jump distance calculating programmed logic circuitry for calculating a jump distance of the player object based on the moving speed; and

animation data output programmed logic circuitry outputting animation data to cause the player object to automatically jump over one of said hollow and said hole formed by the land object image data according to said jump distance when said jump code is detected.

17. A video game apparatus for generating, and supplying to a display, an image signal to display a player object and a land object existing at the foot of the player object in a virtual three dimensional space by processing image data for the player object and land object according to a program, and further supplying a sound signal to sound output programmed logic circuitry by processing sound data according to a program, said video game apparatus comprising:

a player object image data generator that generates player object image data to display a player object, said player object being at least partially controllable by a user;

a land object image data generator that generates land object image data to display a land object including a wall surface, said land object image data containing a climb code;

a climb code detector that detects the climb code included in the land object image data for displaying the land object in the vicinity of said player object being controlled by the user;

wall surface height calculating programmed logic circuitry that calculates a height of the wall surface displayed by the land object image data;

an animation data output program outputting such animation data that the player object automatically performs an optimal action depending upon the wall height when the climb code is detected.

19. A video game apparatus for generating, and supplying to a display, an image signal to display a player object and a land object existing at the foot of the player object

in a virtual three dimensional space by processing image data for the player object and land object according to a program, and further supplying a sound signal to sound output programmed logic circuitry by processing sound data according to a program, said video game apparatus comprising:

a player object image data generator that generates player object image data to display a player object, said player object being at least partially controllable by a user;

a land object image data generator that generates land object image data to display a land object including a wall surface, said land object image data containing a camera switching code;

a camera switching code detector that detects the camera switching code included in the land object image data for displaying the land object in the vicinity of said player object being controlled by the user;

a plurality of virtual cameras; and

a camera switching program to automatically switch between said plurality of virtual cameras dependant upon said camera switching code detected by said camera switching code detector.

21. A video game apparatus according to claim 1, said game apparatus for also supplying a sound signal to sound output programmed logic circuitry by processing sound data according to a program,

wherein said land object image data also contains a sound switching code, and said video game apparatus further comprising:

a sound switching code detector that detects the sound switching code included in the land object image data, a sound data generator to generate sound data for a plurality sounds; and a sound switching program to automatically switch the sound data depending upon the sound switching code.

(IX) EVIDENCE APPENDIX

None.

(X) RELATED PROCEEDINGS APPENDIX

None.